

COLONEL OWEN W. TULLOS  
JOE HOLCOMBE vs UNITED STATES

December 04, 2019

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1 IN THE UNITED STATES DISTRICT FOR  
2 THE WESTERN DISTRICT OF TEXAS  
3 SAN ANTONIO DIVISION

4 JOE HOLCOMBE, et al., :  
5 :  
6 Plaintiffs, :  
7 :  
8 v. :No:  
9 :5:18-CV-00555-XR  
10 UNITED STATES OF :  
11 AMERICA, :  
12 :  
13 Defendant. :  
14

11 VIDEOTAPED DEPOSITION OF  
12 COLONEL OWEN W. TULLOS

14 Wednesday, December 4, 2019  
15 1:33 p.m.

16 United States Attorney's Office  
17 United States Department of Justice  
18 175 N Street, Northeast  
19 Three Constitution Square  
20 Washington, D.C.

21 Noojan Ettehad, Videographer  
22 Terry L. Bradley, Court Reporter

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1 A. Very little. I think we looked at a  
2 couple of small disciplinary actions that did  
3 not rise above a non-judicial punishment, with  
4 the exception of one case.

5 Q. I understand.

6 A. But that wasn't my primary duty.  
7 And just for clarification --

8 Q. Yes.

9 A. -- Cyber Command is a Combatant  
10 Command.

11 Q. That was going to be a question I  
12 had. Okay. That makes sense then.

13 Let's jump, now we're at Holloman  
14 Air Force Base. And I believe this is the  
15 relevant time period during part of Devin  
16 Kelly's investigation and ultimate prosecution  
17 and conviction. Is that correct?

18 A. Yes.

19 Q. All right. And when you were --  
20 You were a Staff Judge Advocate at  
21 Holloman Air Force Base?

22 A. Yes.

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1 little bit. Your --

2 And when I say "your office", I'm  
3 talking about Staff Judge Advocate's office,  
4 which you were the boss of that office. Fair  
5 to say?

6 A. Yes.

7 Q. Okay. So your office Assistant  
8 Judge Advocates or Assistant Staff Judge  
9 Advocates would hold weekly meetings with OSI  
10 separately and also 49th Security Forces  
11 separately, correct?

12 A. Yes. And I don't recall whether it  
13 was weekly with Security Forces. Sometimes  
14 they didn't have as many cases.

15 Q. Okay. And would those meetings  
16 involve in part reviewing active case files  
17 that the agents at OSI and Security --  
18 -- 49th Security Forces were  
19 actively investigating?

20 A. Yes.

21 Q. Okay. And that would include Devin  
22 Kelley's case, correct?

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1 A. Yes.

2 Q. Okay. And I want to talk a little  
3 bit about that.

4 A. Okay.

5 Q. So first of all, you understand  
6 that --

7 And you can look if you want, if you  
8 flip to Page 1811 of the instruction, and go to  
9 No. 33. Article 128 - Assault, is one of the  
10 listed reportable offences in Enclosure 2 of  
11 this mandatory instruction. Is that right?

12 A. Yes.

13 Q. Okay. And that's the charge that  
14 Devin Kelley was charged with and also  
15 convicted on, correct?

16 A. Yes.

17 Q. Okay. Now, in Section (d) this  
18 mandatory section asks that the law enforcement  
19 investigator determines probable cause in  
20 consultation with the Staff Judge Advocate.

21 Is that right?

22 A. Right.

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1 BY MR. ALSAFFAR:

2 Q. They could have happened, you just  
3 don't recall whether when they reported back to  
4 you, you addressed it.

5 Let me ask a different question.

6 A. Okay.

7 Q. As the trainer/supervisor of these  
8 Judge Advocates did you ever specifically  
9 inquire -- and this is for all investigations  
10 at Holloman, not just Devin Kelley -- did you  
11 ever specifically inquire: Hey Judge  
12 Advocates, are you all making sure that these  
13 agents understand the reporting requirements  
14 under probable cause and that we're not holding  
15 back fingerprints that should be reported to  
16 the FBI?

17 A. I do recall conversations about  
18 probable cause.

19 Q. Okay.

20 A. I do not recall specifically the  
21 application of that probable cause, whether it  
22 was with regards to the fingerprints or search

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1 and seizure issues or other aspects.

2 Q. Including reporting of those  
3 fingerprints?

4 A. I don't recall. I remember having  
5 probable cause discussion and training, but not  
6 specifically with regard to reporting.

7 Q. And would you include in that when  
8 we talk about the agents understanding of  
9 collection, storage and reporting of  
10 information, that that includes also what's  
11 called final disposition reports after a  
12 conviction?

13 A. Right.

14 Q. Are you familiar with that term,  
15 final disposition report?

16 A. Yes.

17 Q. Are you familiar with the R-84 and  
18 249 reports?

19 A. Not the forms specifically. I don't  
20 know the numbers.

21 Q. Okay. So there is the fingerprint  
22 report, card or electronic, that is sent to FBI

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1 First of all, that's a mandatory  
2 requirement under this instruction, correct?

3 (Witness nodded.)

4 That "shall".

5 A. Yes.

6 Q. What's your understanding when you  
7 were at Holloman Air Force Base when you were  
8 prosecuting and convicting Devin Kelley, whose  
9 responsibility it was to mail or send the  
10 fingerprint card and final disposition report  
11 to the FBI?

12 A. It would either be the Office of  
13 Special Investigations or Security Forces.

14 Q. Okay. And what did --  
15 My understanding, if I'm -- I want  
16 to make sure I'm not misstating this -- is that  
17 your office after Devin Kelley -- let's talk  
18 about Devin Kelley -- after Devin Kelley was  
19 convicted in November 2012, you were the SJA,  
20 correct?

21 A. Yes.

22 Q. After Devin Kelley was convicted you

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1 qualifying offences to get guns, is one of the  
2 reasons they've demonstrated their willingness  
3 to break the law first, correct? Is that fair?

4 A. As a society, yes, that's fair.

5 Q. Okay. And as a society, as the  
6 general public -- we're talking about  
7 protecting the public -- do we want criminals  
8 who have been convicted of qualifying offences  
9 under this DODI instruction to not have access  
10 to guns because we want to protect the public  
11 from those people? Is that fair?

12 A. That's fair. That's one of the  
13 reasons --

14 Q. Okay.

15 A. -- to the extent that this stops it.

16 Q. Okay. Right. It's one of the  
17 things we can do to prevent dangerous people  
18 from having guns that could increase the risk  
19 of harm to the public generally, fair?

20 A. That's a fair society interest, and  
21 we're interested in that as well.

22 Q. I'm sorry?



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1 Would you agree that when these  
2 dangerous criminals are convicted and reported  
3 and denied access to firearms, that we are  
4 increasing the safety to the general public?

5 MR. FURMAN: Objection to form.

6 THE WITNESS: Yes.

7 BY MR. ALSAFFAR:

8 Q. Would you also agree that if a  
9 dangerous criminal like Devin Kelley, who's  
10 been convicted of a qualifying offence that  
11 would deny him access to firearms, that if that  
12 is not reported, those convictions are not  
13 reported, and people like Devin Kelley do get  
14 access to firearms, that increases the risk of  
15 harm to the general public?

16 MR. FURMAN: Objection to form.

17 BY MR. ALSAFFAR:

18 Q. Do you agree with that?

19 A. Yes, it could. And I --

20 It could, yes.

21 Q. Okay.

22 A. And when you said "dangerous", the

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1 your office at Holloman Air Force Base, the SJA  
2 Office, while you were investigating Devin  
3 Kelley and ultimately convicting him, did you  
4 have an applicable checklist that ensured that  
5 coordination with the OSI and 49th was  
6 documenting in the investigative file?

7 A. I'm pretty sure it was not in the  
8 court martial checklist. I don't know whether  
9 there was a different one. I will mention that  
10 when they say they shall submit the form, the  
11 consultation with the SJA was only as  
12 necessary.

13 Q. Right. And that's going back to  
14 what you said earlier that it was fine, it's  
15 okay and for the individual agents and Security  
16 Forces personnel at 49th to --

17 -- if they made a probable cause  
18 determination, if they made it in their own  
19 minds, at that point it's mandatory for them to  
20 report, and they don't need to consult with  
21 your office, correct?

22 A. Correct.

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1 Q. Okay.

2 A. And anything post conviction would  
3 be the same thing. That decision is pretty  
4 much apparent --

5 Q. Yeah.

6 A. -- and so they wouldn't have to  
7 consult with us.

8 Q. Okay. But they have no discretion  
9 when they receive a report of conviction to not  
10 send that to the FBI, correct? If it's a  
11 qualifying offence like Devin Kelley's.

12 A. Qualifying offence.

13 Q. Correct. And Devin Kelley's was,  
14 right? Yeah?

15 A. That's the way I would read that.  
16 Yes.

17 Q. No. 3 says, under (b) says: Within  
18 15 calendar days after final disposition of  
19 military judicial or nonjudicial proceedings,  
20 or the approval of a request for discharge,  
21 retirement, or resignation in lieu of court  
22 martial, disposition information shall be

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1 argument that could be made for that. Again, I  
2 would be dependent on other mechanisms because  
3 in that timeframe of those reviews I don't know  
4 what the best way to run that meeting would  
5 have been. It's conceivable that would have  
6 been part of it. Yeah.

7 BY MR. ALSAFFAR:

8 Q. Okay. Would you have considered  
9 Devin Kelley's investigation a significant  
10 investigation?

11 MR. FURMAN: Objection to form.

12 THE WITNESS: Yes.

13 BY MR. ALSAFFAR:

14 Q. If an investigation is poorly  
15 conducted by the Air Force, would that affect  
16 the Air Force's ability to preserve good order  
17 and discipline within the Air Force itself?

18 MR. FURMAN: Objection to form.

19 THE WITNESS: Possible. Depends.

20 Again, a number of factors could go into that.

21 BY MR. ALSAFFAR:

22 Q. It could not affect it, but if a --

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1 BY MR. ALSAFFAR:

2 Q. Okay. So you agree that if the Air  
3 Force or DOD issues policies like we've talked  
4 about, mandatory policies concerning criminal  
5 investigations, that they -- they, the Air  
6 Force or DOD -- does have an obligation to  
7 train Investigators and Special Agents on those  
8 mandatory regulations?

9 MR. FURMAN: Objection to form.

10 MR. ALSAFFAR: Correct?

11 THE WITNESS: Yes.

12 BY MR. ALSAFFAR:

13 Q. Okay. And let's look at --

14 Do you have exhibit, the 71-121 in  
15 front of you?

16 A. Yes.

17 Q. Look at Section 1.8 under Lessons  
18 Learned.

19 A. Yes.

20 Q. It states: Within 30 days of the  
21 conclusion of the trial, the local SJA and  
22 available members of the trial team will

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1 A. It was confinement for 12 months, a  
2 bad conduct discharge, and reduction to the  
3 grade of E-1.

4 Q. Okay. What else? Can you read  
5 more? What else is in the --

6 A. The approved sentence to confinement  
7 as a pretrial agreement would not --

8 The approved sentence of this  
9 confinement would not exceed 3 years.

10 Q. Okay. And that means that this was  
11 an offence that he was convicted of, Devin  
12 Kelley was convicted of, that had a sentence  
13 that could have been up to 3 years.

14 A. I believe it could have been up to 5  
15 years.

16 Q. Okay.

17 A. But the pretrial agreement lists --

18 Q. Yeah.

19 A. -- maximum punishment would have  
20 been 3 years, depending on what the jury  
21 returned.

22 Q. Okay. So the actual sentence that

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1 many of them regarding the conviction.

2 Q. What do you mean you consulted with  
3 many of them regarding the conviction?

4 A. 12th Air Force JAA is my higher  
5 Headquarters, and we worked with them  
6 throughout this process.

7 Q. Uh-huh.

8 A. The defense counsel, we coordinated  
9 with them on the clemency aspect of the  
10 process. Similarly, we reported later actions  
11 to various agencies on here.

12 Q. Okay. When you met with those  
13 agencies you just identified after Devin  
14 Kelley's conviction, did you confirm whether or  
15 not they reported the conviction to the FBI?

16 A. No, not that I know of. Somebody  
17 else may have.

18 Q. By the way, is Specification 1 a  
19 crime of domestic violence?

20 A. Yes.

21 Q. And under the Lautenberg Gun Control  
22 Act Amendment, that's in and of itself required

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1 to be reported to the FBI, correct?

2 A. That's correct.

3 Q. Okay. You can put that aside for  
4 now. I think forever, but I'm not going --

5 I just think --

6 Okay. Let's see here. I want to go  
7 back to Exhibit 5.

8 Show you Exhibit 5.

9 And I think I owe you a copy. Here  
10 you go.

11 (Exhibit 5 presented for  
12 identification.)

13 Exhibit 5 is Department of Defense  
14 Manual 7730.47-M, Volume 1, dated December 7,  
15 2010. You see under Paragraph 1(b): This  
16 Volume: Prescribes the reporting data elements  
17 needed to comply with Federal criminal incident  
18 reporting pursuant to the note to section 534  
19 of Title 28, USC (also known and hereafter  
20 referred to as The Uniform Federal Crime  
21 Reporting Act of 1998 --

22 -- 1988 -- sorry -- as amended



1 (Reference (d)) and the note to section 922 of  
2 Title 18 USC (also known and hereafter referred  
3 to as The Brady Handgun Violence Protection Act  
4 of 1993, as amended, Reference (e)).

5 Did I read that correctly?

6 A. You did with one exception. It  
7 would be Violence Prevention Act.

8 Q. Oh. Thank you for correcting that.

9 A. Sure.

10 Q. Thank you.

11 Boy. Whoever wrote this needs to go  
12 back to legal writing school, right? All of  
13 these.

14 Okay. I want you to go to Section 4  
15 on the second page, which is 4945 under  
16 Judicial Functions. And it reads: The two  
17 areas involved in the DIBRS that fall in the  
18 Judge Advocate area of responsibility are the  
19 reporting requirements of Reference (m) and the  
20 results of the trial reporting required by  
21 Manual of Courts Martial (Reference (r)) Rule  
22 of Court Martial 1101. Judicial function

1 officials shall report the results of the trial  
2 and the identifying information for offenders  
3 qualifying pursuant to The Brady Handgun  
4 Violence Prevention Act of 1993, as amended.  
5 Legal organizations with DIBRS reporting  
6 responsibilities shall forward data to the  
7 functional consolidating activity on a monthly  
8 basis. The functional consolidating activity  
9 shall forward data to DMDC on a monthly basis.

10 Did I read that correctly?

11 A. Yes.

12 Q. What is your understanding of this  
13 Rule No. 4?

14 A. That we have an obligation to report  
15 the results of trial and then the subsequent  
16 actions that we have when the convening  
17 authority takes final action, to the agencies  
18 responsible for entering that in the database.

19 Q. To entering that into what?

20 A. The database.

21 Q. I'm sorry. Who's responsibi --

22 Who's responsibility is it to enter

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1 it into the database according to this?

2 A. Either Security Forces or Office of  
3 Special Investigations.

4 Q. Okay.

5 A. We did not have access to DIBRS.

6 Q. So the Staff Judge Advocate Office,  
7 it doesn't have access to DIBRS, correct?

8 A. That's correct.

9 Q. Okay. So what's your understanding  
10 here of the two areas involved in the DIBRS  
11 that fall in the Judge Advocate area of  
12 responsibility? Is it just reporting the  
13 results of trial, as it relates to Devin  
14 Kelley's case, to the AFOSI and Security  
15 Forces?

16 A. That's correct.

17 Q. Okay. Um, okay. That's all I have  
18 on that one.

19 I'll hand you Exhibit No. 4, and  
20 then we'll be caught up on my reverse counting.  
21 And let me give this to your attorneys.

22 Here you go.

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1 -- even it's numbering is interesting -- Page 2  
2 of this document.

3 MR. FURMAN: Jamal, is there a Bates  
4 stamp?

5 MR. ALSAFFAR: Yeah. I don't see a  
6 Bates stamp on this, but I know this is --

7 This was produced, but --

8 MR. STERN: This is our production,  
9 right?

10 MR. ALSAFFAR: It should be, yeah.  
11 It should be. I don't know why there's not a  
12 Bates stamp number on it, but we can certainly  
13 go back and look over it. Yeah. Yeah. But  
14 there is not. There is not. I don't --

15 I don't necessarily know why  
16 actually. It's strange.

17 BY MR. ALSAFFAR:

18 Q. Okay. On the bottom of Page 2,  
19 you --

20 Do you know what the Holloman Air  
21 Force Base High Risk For Violence Response Team  
22 is?

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1 A. Yes.

2 Q. And it's HRVRT is the acronym,  
3 correct?

4 A. Yes.

5 Q. Can you tell me what the Holloman

6 Air Force Base High Risk For Violence Response

7 Team is as it existed at the time of Devin

8 Kelley's investigation and conviction?

9 A. It's a team that would be convened

10 when deemed appropriate based on a certain fact

11 and circumstances. It would be composed of

12 investigators, Security Forces and/or Office of

13 Special Investigations, medical personnel,

14 usually mental health, possibly family advocacy

15 legal, so interdisciplinary team that would try

16 to assess when a situation would be a potential

17 for violence to occur.

18 Q. Okay. Um, and in this letter the

19 ATF counsel states that in May 14th-15th,

20 2012 -- so this is the same Page 2 I was

21 referring to you to -- said that: An HRVRT was

22 convened to discuss Kelley's mental health

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1 first -- I have two areas to ask you about --  
2 first, do you remember this Holloman Air Force  
3 Base High Risk For Violence Response Team that  
4 was put together to discuss Devin Kelley  
5 specifically?

6 A. It occurred before I arrived.

7 Q. Okay. So this was 2 months --  
8 -- 2 months before you arrived?

9 A. Right. I was aware of it after the  
10 fact.

11 Q. Okay. And how did you become aware  
12 of this High Risk For Violence Response Team  
13 that was put together at Holloman Air Force  
14 Base for Devin Kelley?

15 A. As part of my review and discussion  
16 of the case I became aware of it.

17 Q. Okay. So as part of your duties as  
18 an SJA at Holloman Air Force Base and a  
19 supervisor of Judge Advocates at the base, you  
20 were aware that a High Risk For Violence  
21 Response Team was put together to specifically  
22 assess Devin Kelley's risk factors, correct?

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1 A. Yes.

2 Q. And specifically, the High Risk For  
3 Violence Response Team was put together for  
4 Devin Kelley in May 2012 by the Air Force,  
5 correct?

6 A. Yes.

7 Q. And the reason why that the High  
8 Risk For Violence Response Team was put  
9 together by the Air Force in May 2012 was  
10 because Devin Kelley was a major threat to  
11 commit an act of violence.

12 MR. FURMAN: Objection to form.

13 MR. ALSAFFAR: Correct?

14 THE WITNESS: Yes.

15 BY MR. ALSAFFAR:

16 Q. And you agreed with that?

17 A. It was a potential. They were  
18 assessing that. And I think that's what their  
19 conclusion was. Yes.

20 Q. Actually they said he is a major  
21 threat to commit an act of violence, correct.

22 A. It was convened to determine that,

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1 and that was their determination.

2 Q. Fair. Fair. So the High Risk

3 Violence Response Team at Holloman Air Force

4 Base in May 2012 was convened to decide whether

5 Devin Kelley was a major threat for violence,

6 correct?

7 A. That's correct.

8 Q. And they ended up determining that

9 in fact Devin Kelley was a high risk major

10 threat to commit an act of violence, correct?

11 A. Yes.

12 Q. And you didn't disagree with that

13 when you were part of the review of that

14 decision, were you?

15 A. No, I don't disagree with it.

16 Q. Okay. And on Page No. 3, the

17 paragraph titled June 8th, 2012, this document

18 states: Kelley's Commander orders him into

19 pre-trial confinement at 49 SFS Building, 35.

20 Confinement was deemed necessary because it was

21 foreseeable he would flee again and engage in

22 serious criminal misconduct.



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CERTIFICATE OF NOTARY PUBLIC

I, Terry L. Bradley, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me in shorthand and thereafter reduced to computerized transcription under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.



Notary Public in and for  
the District of Columbia

My Commission expires: April 30, 2022